

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice FC-123

1956-B, 1962-A

For: State and County Offices

Debt Settlement of Farm Loan Programs Debts

Approved by: Acting Administrator

Richard O. Swuman

1 Overview

A

Background

Based on an OIG audit, further guidance is needed in processing debt settlements and monitoring judgment and chargeoff cases. Also, delegation of authority to SED's shall be provided to allow them to approve cancellation of debts discharged in bankruptcies and debt settlements up to \$100,000 approved under provisions of the Debt Collection Act according to FmHA Instruction 1951-J.

B

Purpose

This notice:

- provides direction and authorities to State and County Offices on processing debt settlement requests
- requires a review of accounts that have been charged off since FY 1988.

C

Contact

If questions:

- County Offices shall contact the State Office
- State Office shall contact Bruce Mair or Kim Laris, through the Area Office.

Disposal Date

June 1, 1998

Distribution

State Offices; State Offices relay to County Offices

6-16-97

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2 Delegation of Authority

A

Canceling Debt Discharged in Bankruptcy

SED's:

- are authorized to approve cancellation of debts discharged under Chapter 11, 12, or 13 bankruptcy, according to RD Instruction 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding debt

Note: All liable parties shall have received a bankruptcy discharge before SED uses this authority.

- may continue to exercise their authority, according to RD Instruction 1956-B, section 1956.84(a)(1)(ii), to approve cancellation of debts discharged in Chapter 7 bankruptcy according to RD Instruction 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding debt

- may approve cancellation of debt discharged under bankruptcy even if a borrower has received previous debt forgiveness.

B

Processing Settlements Approved by U.S. Attorney's Office

While under its jurisdiction, the U.S. Attorney's Office or the Civil Division of the Department of Justice will often negotiate settlement of an account. When directed by the U.S. Attorney's Office, SED's may process a debt settlement under RD Instruction 1956-B without application, when it has been negotiated and approved by the U.S. Attorney's Office, regardless of the size of the debt. Document the case file to reflect the U.S. Attorney's decision. A copy of the U.S. Attorney's approval shall be attached to FmHA 1956-1. COC review is not required in this case.

Note: Except as provided in subparagraph A, debt settlements of \$1 million or more shall be sent to the National Office for review and approval.

C

Approving Debts Under FmHA Instruction 1951-J

SED's are authorized to approve settlement of debts according to FmHA Instruction 1951-J, section 1951.469(c)(2), when the claim, exclusive of interest, penalties, and administrative costs, is less than \$100,000.

D

Redelegation of Authorities Not Authorized

SED's shall not redelegate the authorities described in subparagraphs A, B, and C.

3 Approving Debt Settlements for Borrowers Who Have Received Previous Debt Forgiveness

A

Processing Debt Settlements

Based on the Federal Agriculture Improvement and Reform Act of 1996, borrowers are only entitled to 1 debt forgiveness in the Consolidated Farm and Rural Development Act (ConAct) direct loan program. There are no exceptions. However, even though a previous debt forgiveness has been received, debt settlements can be processed outside ConAct authorities as follows.

- Settlement of debt approved by the U.S. Attorney.
- Cancellation when debt is discharged in bankruptcy. Under these circumstances, the court authorized the debt forgiveness, not FSA. SED can continue to approve and process cancellation because of bankruptcy according to RD Instruction 1956-B and subparagraph 2 A. All security shall be liquidated before the entire account is canceled.
- Debt settlements approved under FmHA Instruction 1951-J, section 1951.469(c), on program and nonprogram loans. Approval is based on provisions in 31 U.S.C. 37. Follow RD Instruction 1956-B for guidance in accepting and processing debt settlement requests. Settlement of amount exceeding \$100,000 shall be approved by the Department of Justice, through OGC.

If a debt settlement cannot be approved under RD Instruction 1956-B or FmHA Instruction 1951-J, charge off the account without releasing liability after:

- all security is liquidated
 - all efforts to collect the debt have been exhausted.
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4 Verifying Assets

A

Authorization to Verify Assets

To obtain complete and accurate information for making a full determination of a borrower's financial condition, see RD Instruction 1956-B, section 1956.57(b) and FmHA 410-7.

Continued on the next page

4 Verifying Assets (Continued)

B
Obtaining
Borrower's
Authorization

Current assets identified on FmHA 1956-1 shall be verified with those sources indicated by the borrower as holding, directing, or managing the investment.

The borrower will be requested to provide authorization for FSA to obtain confidential financial information necessary to verify the value of:

- savings accounts
- checking accounts
- certificates of deposit
- individual retirement accounts
- retirement and pension funds
- mutual funds
- stocks
- bonds
- accounts receivable.

A request for verification will be made of any entity that the FSA investigation indicates may be able to contribute information concerning the borrower's financial condition.

When authorization is provided, the FSA official responsible for assembling the application documentation shall contact the appropriate institution and obtain, at a minimum, the following information:

- type of account
- account number
- dollar value
- maturity date.

The request from FSA to the applicable institution shall contain the following certification:

"This certifies that the United States Department of Agriculture, acting through the Farm Service Agency, has complied with Title XI of the "Right to Financial Privacy Act of 1978", Public Law 95-630 in seeking information regarding the above-named borrower."

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4 Verifying Assets (Continued)

C

Settlement Without Signature

If the borrower refuses to provide authorization, is uncooperative, or has disappeared, and the debt settlement is proposed without a signature, the responsible FSA official shall attempt to verify financial information according to this paragraph.

If a borrower requests debt settlement, refuses to provide authorization, and investments and financial data cannot be verified, the application may be rejected for failure to provide complete financial information according to RD Instruction 1956-B, sections 1956.57(b) and 1956.84(d).

Document the results of this effort in the borrower's case file.

D

Exceptions

Investments do not require verification if 1 of the following applies:

- the debt being settled has been discharged in bankruptcy
- the account has been settled by the Department of Justice
- FSA has been advised by OGC that the debt is uncollectible.

5 Judgment Debts

A

Foreclosure Judgments

In States with judicial foreclosure, as soon as the foreclosure judgment is obtained, prepare FmHA 1962-20 and process 3B ADPS transaction according to RD Instruction 1955-A, section 1955.15(f)(4).

- Process foreclosure judgments to the account so the interest rate on the account will start accruing interest at the Treasury Bill rate as of the date the judgment is filed, instead of the loan rate. This will provide servicing officials with the correct unpaid balance when determining bidding at the foreclosure sale.
- When the judgment is recorded, the borrower's account will no longer be reflected on RC 540. However, continue to use AGCREDIT to monitor the foreclosure in County Offices, and State Offices shall continue using the State Office Tracking System.

The foreclosure judgment shall remain on the account until after the foreclosure sale. If a deficiency judgment was not and will not be requested, the case should be debt settled (canceled) upon receipt of the U.S. Attorney's letter that the case is closed and no further collection of the debt can be made. If a deficiency judgment is obtained, a 3B transaction will be processed to record the judgment amount. Any amount above the judgment amount will be canceled without application with a 3K debt settlement transaction according to subparagraph 2 B.

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5 Judgment Debts (Continued)**B****Settlement of
Deficiency
Judgments**

Deficiency judgment debtors, whose judgment account has not been charged off, shall be reviewed on an annual basis according to RD Instruction 1962-A, section 1962.49(e)(3)(iii). From this review, the servicing official will determine whether any action should be referred to the U.S. Attorney or if the judgment debt could be charged off without release of liability under RD Instruction 1956-B, section 1956.75(a). Document the case file to show that the review was made and what attempts were made to resolve the account.

IF...	THEN...
the U.S. Attorney has not closed the case and the debtor wishes to make a compromise or adjustment offer	the offer and any related payment shall be sent to the U.S. Attorney for approval of the offer.
the U.S. Attorney has closed the case	<p>the judgment debt may be charged off according to RD Instruction 1956-B, section 1956.75(a) under either of the following conditions:</p> <ul style="list-style-type: none"> the debtor has disappeared and cannot be found without undue expense, there are no known assets or future debt paying ability, and all the security has been liquidated or disposed of 2 years has elapsed since any collections were made on the judgment, and the debtor has no equity in property on which the judgment is a lien or on which it can presently be made a lien.
the judgment is satisfied or released for less than full payment	the account should be canceled as a nonjudgment debt according to RD Instruction 1956-B, after obtaining acknowledgment from the U.S. Attorney indicating the judgment has been satisfied or released and the case closed. SED's shall process the debt settlement according to subparagraph 2 B.

Note: The Department of Justice will not be requested to renew or revive a judgment unless there is a reason to believe that substantial assets have or may become subject thereto.

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5 Judgment Debts (Continued)

C

**County Office
Tracking of
Deficiency
Judgments**

When a judgment is recorded to the borrower's account, the borrower is no longer reflected on RC 540. No other Finance Office report is available to the County Office for tracking these cases. Therefore, it will be necessary for County Offices to track judgment cases in AGCREDIT according to the following table.

Step	Action												
1	<ul style="list-style-type: none"> • "OTHER" to "JUDGMNT" when a deficiency judgment has been filed and any remaining debt has been debt settled. • In supporting activities on the Judgement Screen, enter the date the judgment was filed and when it will expire, which is 20 years after date of judgment in Federal court. • Change the planned due date to reflect the annual review date. <p>Note: The "JUDGMNT" code is not to be used for foreclosure judgments. Foreclosures are tracked separately from deficiency judgments in the normal tracking of liquidation.</p>												
2	<p>Immediately:</p> <ul style="list-style-type: none"> • enter any outstanding deficiency judgments that are not being tracked in AGCREDIT by initializing them in ag90 under category "CAT310", "NP B 30 Days Past Due" • "OTHER" to "JUDGMNT" and follow step 1. 												
3	From "JUDGMNT", "OTHER" to "CLDT302" to track the debt settlement if the judgment account is later charged off or the debt canceled if the judgment is released or satisfied.												
4	Take the following steps to run reports from AGCREDIT to obtain a list of judgment accounts.												
	<table> <tr> <th>Step</th><th>Action</th></tr> <tr> <td>1</td><td>On the Main Menu, select "G", "Report Options Menu".</td></tr> <tr> <td>2</td><td>On the Report Options Menu, select "I", "Print Report of Open Activities with Outcomes and Activities", select "y", and PRESS "Enter".</td></tr> <tr> <td>3</td><td>ENTER "JUDGMNT" on the activity code line, "Ctrl X", and select "Y" to exit.</td></tr> <tr> <td>4</td><td>Select "option D", "sort order by last name", and select "Option A" to indicate that sort selection is completed.</td></tr> <tr> <td>5</td><td>The report will prepare in the background.</td></tr> </table>	Step	Action	1	On the Main Menu, select "G", "Report Options Menu".	2	On the Report Options Menu, select "I", "Print Report of Open Activities with Outcomes and Activities", select "y", and PRESS "Enter".	3	ENTER "JUDGMNT" on the activity code line, "Ctrl X", and select "Y" to exit.	4	Select "option D", "sort order by last name", and select "Option A" to indicate that sort selection is completed.	5	The report will prepare in the background.
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5 Judgment Debts (Continued)

D

State Office Tracking of Judgments

State Offices can obtain a list of judgment cases through AGCREDIT according to subparagraph C and through FOCUS. FOCUS Report JUDTYP10 was developed by the National Office. This report:

- can be copied from ID #AFN187 and modified by changing line 55 to reflect the appropriate State
- will not distinguish these accounts between foreclosure or deficiency judgments
- was revised to remove RHS court cost accounts.

Judgment accounts can be identified by the third and fourth digit of the fund code, as follows:

- 00 means judgments against the borrower
 - 08 means third-party judgments.
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6 Chargeoff and Collection-Only Cases

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Collection-Only Classification

The collection-only classification will no longer be used. Any borrowers classified as collection-only shall be reclassified to active and considered for debt settlement within 30 calendar days from the date of this notice.

B

When to Charge Off Accounts

Chargeoff is an accounting tool that FSA uses to record a loss on accounting records after all efforts to collect or debt settle the account are exhausted. The borrower remains liable for the debt even after the debt is charged off or until the statute of limitations expires. If the statute of limitations has already expired, refer the account to OGC for concurrence and process a debt settlement cancellation without application.

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6 Chargeoff and Collection-Only Cases (Continued)

B

**When to Charge
Off Accounts
(Continued)**

Chargeoffs may only be processed on:

- judgment debts, according to RD Instruction 1956-B, section 1956.75(a)
- nonjudgment debts, according to RD Instruction 1956-B, section 1956.75(b), when 1 of the following occurs:
 - the borrower will remain liable
 - there is a probability that all or a portion of the debt may be collected by offset, or a deficiency judgment within 10 years
 - the principal balance is \$2,000 or less and efforts to collect have been unsuccessful, or further collection efforts at this time would not be effective or economical
 - there is no security for the debt, and the debtor meets either of the following conditions:
 - unable to pay any part of the debt and has no apparent repayment ability
 - able, but unwilling to pay any or all of the debt and OGC advises that the Government cannot enforce collection of a significant amount at this time.

Nonjudgment debts should be canceled without maintaining personal liability of the borrower under RD Instruction 1956-B, section 1956.70, instead of being charged off when either of the following occurs:

- there is no security for the debt and the debtor has no income or assets from which the debt could be collected and no reasonable prospects of being able to pay any part of the debt before the later of the following:
 - the expiration of the statute of limitations
 - 10 years from the date the Government's right to collect the debt by offset first accrued
- OGC advises in writing that the claim is legally without merit or that the necessary proof of the claim cannot be produced.

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6 Chargeoff and Collection-Only Cases (Continued)

C

Monitoring Charged Off Accounts

County Offices shall monitor charged off accounts annually until the expiration of the statute of limitations and the maximum time period permitted for administrative offset under RD Instruction 1951-C, section 1951.103, which is 10 years from the date the Government's right to collect the debt first accrued.

- This review shall be made during the same time as the review of judgment accounts and other delinquent and problem case accounts are reviewed, according to RD Instruction 1962-A, section 1962.49(e)(3)(iii).
- The nonjudgment charged off accounts should be considered for cancellation during each review.

The servicing official shall notify the State Office if assets or income from which collection can be made are discovered. Use Management Record System to monitor all judgment and nonjudgment chargeoff accounts. A Finance Office report is not available.

D

Cancellation of Charged Off Accounts

If cancellation of the charged off account is appropriate, the servicing official will seek the debtor's application if required under RD Instruction 1956-B, section 1956.70, and submit the debt settlement to the State Office for processing. The State Office shall route the 3K transaction to the Finance Office or send the Finance Office the debt settlement to process with a problem case report.

E

Reviewing Charged Off Accounts

There are numerous charged off accounts where the statute of limitations for seeking deficiency judgments and administrative offset have already expired.

To obtain an accurate listing of charged off accounts that can be offset under the Treasury Offset Program, County Offices shall review all accounts in the system that have been charged off since FY 1988 to determine whether a debt settlement cancellation can be approved.

- A report is being sent, separate from this notice, to each State Office to identify these charged off accounts.
 - This review, including the processing of any cancellation, shall be completed no later than August 31, 1997.
 - Additional information on the Treasury Offset Program will be provided at a later date before charged off accounts are reported to the Department of Treasury.
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